

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

DISTRICT OF NH

2020 JUL 29 P 4: 51

Sensa Verogna, Plaintiff,

v.

Twitter Inc., Defendant.

Case #: 1:20-cv-00536-SEM

24-11036-SEM

**PLAINTIFFS OBJECTION TO TWITTER, INC.'S MOTION
TO STRIKE DOCUMENT 35**

Plaintiff, Sensa Verogna ("Plaintiff") objects to Defendant, Twitter, Inc. ("Twitter('s)'), Motion to Strike Document 35, (the "Reply"), which was a surreply to the Plaintiff's original "Motion" to Declare Twitter's Computer Network a Public Forum under Law, [Doc. 16], which is authorized under the rules, and is admittedly a little overlength, but that it was filed within the time limits and that it would not prejudice Twitter if the court were to simply allow Twitter a response, within a reasonably time. In support of this Objection, Plaintiff states as follows:

1. Plaintiff's "Reply" is unauthorized pursuant to Local Rule 7.1(e)(1) and should not be stricken because it was filed within the seven (7) days of the service and leave of the court was not required. See LR 7.1(e)(1) (replies restricted to rebuttal of factual and legal arguments raised in the objection or opposition memorandum in support of a dispositive motion where leave of the court is not required.)

2. Twitter does not state specifically which material it objects to as required by Local Rule 7.2(b). I.e. does it object to the Motion, the Memorandum or the additional evidence that rebuts Twitters factual (allegedly) or legal arguments raised in their Objection. [Doc. 26]. Additionally, Twitter does not state, at all or specifically, how it would be prejudiced if the court were to allow the Reply. Twitter can hardly claim prejudice of a Reply that is over the rule limit by 5 pages, and at such an early stage of the case.

30 Dispositive Arguments

31 3. The Plaintiff's Motion argues that, "A declaratory judgment is an equitable tool
32 used by courts to define the legal rights and obligations of parties", [Doc. 16. ¶ 3]. Plaintiff's Doc.
33 16 would extinguish legal claims that Twitter's Computer Network is a Public Forum under Law,
34 as alleged in his Complaint. [Doc. 1]. Plaintiff contends that his Doc. 16 Motion is not a motion
35 for summary judgment which does not mean that he concedes that the underlying Motion is non-
36 dispositive. [Doc. 35, ¶ 16], but that the horse must be put back in front of the kart if in fact the
37 Plaintiff misconstrued the legal mechanisms of which [declaratory] motions or actions to bring
38 first.

39 4. The Plaintiff's Reply expands arguments of the Declaratory Judgment Act., 'no
40 limitation has been placed upon its use.'" [Doc. 35-1 ¶ 7]; "The federal Declaratory Judgment Act
41 is procedural. [Doc. 35-1 ¶ 12]; There are no parallel proceedings underway in any state court that
42 would provide for ventilation of the issues.) [Doc. 35-1 ¶ 14]; And, if not answered by the Court,
43 how will the Plaintiff know whether or not he can in fact make proper Constitutional claims against
44 a private company for operating what the Plaintiff believes to be a Public Forum. [Doc. 35-1 ¶ 16];
45 a declaration that Twitter is a "public forum"—is a necessary component of his Constitutional
46 claims in Claim III. [Doc. 35-1 ¶ 17].

47 5. And even if the Court were to consider Plaintiff's Reply as a non-dispositive
48 motion, the Court may excuse a party's failure to do so and consider the brief regardless." See *Hill*
49 *v. Ford Motor Co.*, 2014 WL 916486, at *6 n.5 (N.D. Ga. Mar. 10, 2014) (citing *Brannen v. United*
50 *States*, 2011 WL 8245026, *1 n.1 (N.D. Ga. Aug.26, 2011) (Murphy, J.)). The decision to grant
51 such leave "is purely discretionary" and the Court should generally do so only "when 'a valid
52 reason for such additional briefing exists.'", which is described herein. See *Harman*, 512 B.R. at

335 (quoting *First Specialty Ins. Corp. v. 633 Partners, Ltd.*, 300 F. App'x 777 (11th Cir.2008)).
“Valid reasons include ‘where the movant raises new arguments in its reply brief.’” Id., or in
rebuttal of factual and legal arguments raised in the objection or Reply.

Public Forum Arguments

6. Plaintiff concedes that his Reply to a dispositive Motion does exceed the ten (10) pages as required Local Rule 7.1(e)(1) by 5 pages, [Doc 35-1 & 2 contain 15 pages total], but that the Reply is restricted to rebuttal of factual and legal arguments raised the original Motion to Declare Twitter's Computer Network a Public Forum under Law, [Doc. 16.]; and in rebuttal to Twitters Doc. 26 Objections. Further, Plaintiff also submitted new evidence in his reply, to show that Twitters Public Policy refutes Twitters statement that its Computer Network is not a Public Forum. Additionally, Local Rule 7.1(e)(1) is silent as the number of pages allowed in a declaration or any exhibits allowed or not allowed in support thereof.,), (“rebuttal of factual and legal arguments” appears to be quite expansive and could be defined to be any number of things.) *Doc. 35-3 contains a one (1) page declaration and a nine (9) page EXHIBIT A- Twitter Public Policy, ¶ Policy.) [See Doc. 35-3].*

7. The Plaintiffs Motion argues that Twitters own statements should be considered when determining whether their Computer Network is a Public Forum. “They [Twitter] cannot now deny their own implied invitation to use the space as it was clearly intended, a public forum for public speech, whose nature, purpose and primary use is public and not private speech, which is open to the public. [Doc. 16, motion ¶ 6]. And that Twitter has made public statements such as; Twitter has conceded publicly that it itself considers its Computer Network a “global town hall” which is “public” and “Live, [Doc. 16.1, memorandum ¶ 4], and that Twitters users use Twitters Computer Network “as they would a public square”. [Doc. 16.1, memorandum ¶ 5]; and that “

99 10. The motion also clarifies Plaintiff's Claim III misconceptions made by the
100 Defendant. [Doc. 35 ¶ 2., (misabeled as 19)] and rebuts Twitters contention that it's computer
101 network can only be considered a public forum through the actions of government. [Doc. 26-1, pg.
102 6,7], and further objects to Twitters arguments that the Plaintiff's "Declaratory" motions are
103 somehow procedurally improper or inappropriate. [Doc. 26-1, pg. 8, 10].

104 11. Twitter cites *Zibolis-Sekella* in which the court chose not to address reply
105 arguments raised for the first time in a Reply. Additionally, *Zibolis-Sekella* quotes *See v.*
106 *Ruehrwein*, No. 12-cv-228-JD, 2013 WL 4042423, at *1 (D.N.H. 2013), which involved
107 arguments to a jury. Neither of these 2 cases remotely mirrors any of the facts at issue here and
108 neither one mentions any Local Rules such as LR 7.1(e)(1) and LR 7.1(e)(2) at issue here.

109 12. The Court should deny Twitter's motion to strike" because Plaintiff's "surreply is
110 limited in scope, and expounds upon issues already touched upon in the parties' briefs. Plaintiff
111 does not oppose the opportunity for Twitter to respond to his Reply and therefore it would not be
112 prejudiced. *Gemini Ins. Co. v. Stafford Transp., Inc.*, 2016 WL 4582071, at *2 (N.D. Ga. May 27,
113 2016), *aff'd* Case 19-05145-lrc Doc 21 Filed 09/30/19 Entered 09/30/19 11:19:16 Desc Main
114 Document Page 3 of 5 4 sub nom. *Gemini Ins. Co. v. Castro*, 723 F. App'x 797 (11th Cir. 2018))
115 (citing FED. R. CIV. P. 7)).

116 13. Limiting such consideration only to the original motion [Doc. 16] would prejudice
117 the Plaintiff as the Court would not be looking under all the rocks and all legal theories prior to
118 recording judgment on the issue.

119 14. No memorandum of law is necessary because Plaintiff cites herein the authority in
120 support of his objections.

15. If the Court concludes that the Plaintiff was required to seek leave, the Court should grant him such leave, nunc pro tunc, because of the serious and contested nature as to whether Twitters Public Forum is a Public Forum under the Law.

WHEREFORE, the Plaintiff, respectfully requests that this Honorable Court:

A. Deny Defendants Motion to Strike Document 35; and

B. Enter an order which allows Document 35 (the Reply), to be considered within the arguments made in Plaintiff's Doc. 16 Motion;

C. Allow Defendants 14 days to respond to the Reply; and

D. Grant such other and further relief as the Court deems just.

Respectfully,


/s/ Plaintiff, Anonymously as Sensa Verogna
SensaVerogna@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July 2020, the foregoing document was made upon the Defendant, through its attorneys of record to Jonathan M. Eck jeck@orr-reno.com and Julie E. Schwartz, Esq., JSchwartz@perkinscoie.com.

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